

REMARKS

This is in response to the Office Action mailed on November 22, 2004, and the references cited therewith.

Claims 1, 24-26, 28, 31-49, and 51-52 are amended, claims 3, 5-6, 27, 29-30 are canceled, and no claims are added; as a result, claims 1-2, 4, 7-26, 28, and 31-52 are now pending in this application.

Claims 1 and 26 have been amended to incorporate the limitation of claims 3 and 17, respectively. Accordingly, claims 3 and 17 are canceled. Claims 5-6 and 29-30 have been canceled in view of the amendments to claims 1 and 26. Claims 28 and 31-49 have been amended to remove a portion of the preamble. Claims 24-25, 48-49, and 51-52 have been amended to remove the trademark FUSABOND. The term FUSABOND has been replaced with the phrase "polymeric adhesion modifier". Support for the amendments to claims 24-25, 48-49, and 51-52 can be found in the specification at page 12, line 8, bridging to page 13, line 7, and in original claims 23, 47, and 50.

No new matter has been added by way of the amendments.

§112 Rejection of the Claims

Claims 27-49 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In light of the claim amendments provided herein, this rejection is respectfully traversed.

Claims 27-49 have been amended to remove the phrase "backrest, or both" from the preamble of each claim. Applicant respectfully submits that the amendments obviate the grounds for the rejection under 35 U.S.C. §112, second paragraph. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 27-49.

§102 Rejection of the Claims

Claims 1-22 and 26-46 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Dudley (U.S. Patent No. 3,713,696). In light of the claim amendments and remarks provided herein, this rejection is respectfully traversed.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon*, 919 F.2d 688, 16 U.S.P.Q.2d 1897, 1908 (Fed. Cir. 1990) (*en banc*), *cert. denied*, 500 U.S. 904 (1991). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the art. *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 U.S.P.Q.2d 101 (Fed. Cir. 1991).

On page 3 of the Office Action, lines 1-2, the Examiner states that Dudley allegedly teaches the structure substantially as claimed. Dudley discloses a vehicle seat having "a plurality of separate pads" (abstract) and the seat comprises at least four individual pads (col. 2, line 25). For the convenience of the Examiner, Applicant notes that claims 1 and 26 have been amended to incorporate the limitation of claims 3 and 17, respectively. Claims 1 and 26 now recite "wherein the soft elastic material is a continuous, one piece seamless material." The seat disclosed by Dudley is composed of several individual pads and Applicant's seat is "a continuous, one piece seamless material." Thus, Dudley does not teach or suggest each element of claims 1-22 and 26-46 (as amended). Accordingly, Dudley does not anticipate claims 1-22 and 26-46. Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b).

§103 Rejection of the Claims

Claims 23-25 and 47-52 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dudley in view of Grant et al. (U.S. Patent No. 3,647,260) and Nickerson et al. (U.S. Patent No. 5,869,164). This rejection is respectfully traversed.

Dudley (U.S. Patent No. 3,713,696)

Dudley describes a vehicle seat that comprises a plurality of separate pads (abstract). Dudley does not describe the composition of the pads or a process for making the pads. Dudley

does not disclose or suggest a seat manufactured from a foam cushion formed from any of the elements recited in claims 23-25 and 47-52.

Grant et al. (U.S. Patent No. 3,647,260)

Grant describes a replaceable insert for chairs (abstract). Grant discloses that the cushion layer 19 is an open-celled flexible foam (col. 3, lines 26-27) and that the cushion layer can be materials such as polyurethane foam, reticulated polyethylene or polypropylene foam, or open-celled polyvinyl chloride foam (col. 4, lines 12-22). Grant does not disclose or suggest a seat manufactured from a foam cushion formed by the elements of the methods recited in claims 23-25 and 47-52. While Grant discloses the use of various known foams, Grant does not disclose or suggest using a seat manufactured from Applicant's novel foam cushion.

Nickerson et al. (U.S. Patent No. 5,869,164)

Nickerson describes a padding device (abstract). The pad described by Nickerson "comprises a thixotropic fluid formed from a mixture of an oil and a block polymer" (col. 3, lines 45-47). Nickerson does not disclose or suggest a seat manufactured from a foam cushion formed as recited in claims 23-25 and 47-52. While Nickerson discloses a padding device comprising a block polymer, Nickerson does not disclose or suggest using a seat manufactured from Applicant's novel foam cushion. More specifically, Nickerson does not disclose or suggest a seat manufactured from a foam cushion formed from (a) at least one of rubber and a resin; (b) a blowing agent; (c) a polymeric adhesion modifier; (d) a decomposition accelerating agent, and (e) a cross-linking agent.

No Prima Facie Case of Obviousness

On page 3 of the Office Action, last paragraph, the Examiner states that Dudley teaches a structure similar to the claimed structure, including the use of some, "but not all" of the same materials. The Examiner cites Grant and Nickerson to suggest that "some" of the materials were known in the art. The Examiner then states that "It would have been obvious... to modify the seat, as taught by Dudley, to include some of the materials, as taught by Grant et al. and

Nickerson et al., so that the seat would possess some of the characteristics that those materials provide and to satisfy the needs of various manufacturers and/or customers." (emphasis added).

While some of the materials used by Applicant to manufacture the novel foam cushion of claims 23-25 and 47-52 were known in the art, Applicant respectfully points out that such averments are insufficient to establish a *prima facie* case of obviousness. Applicant respectfully submits that the Examiner has not proposed any modifications of the teachings of Dudley, Grant, and Nickerson, alone or in combination, that would allow one of skill in the art to arrive at the presently claimed invention. Applicant respectfully asserts that a *prima facie* case of obviousness cannot be maintained over claims 23-25 and 47-52 by the averments of the Examiner.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d (BNA) 1596, 1598 (Fed. Cir. 1988) and *In re Piasecki*, 745 F.2d at 1472, 223 U.S.P.Q. at 788. To establish a *prima facie* case of obviousness, the Examiner has the burden to establish three basic elements. The Examiner must establish that the prior art documents teach or suggests all the claim limitations. The Examiner must establish that there is some suggestion or motivation, either in the cited documents themselves or in the knowledge generally available to an art worker, to modify the documents or to combine document teachings so as to arrive at the claimed invention. Additionally, the Examiner must establish that there is a reasonable expectation of success. M.P.E.P. § 2143.

The Prior Art Must Teach or Suggest All the Claim Limitations

In order to establish a *prima facie* case of obviousness, the Examiner has the burden to establish that the cited references teach or suggest all the claim limitations. Applicant's claims are drawn to novel foam cushion seats manufactured from a novel combination of materials. The cited references, alone or in combination, do not teach or suggest a seat that is manufactured from foam cushion formed from: (a) at least one of rubber and a resin; (b) a blowing agent; (c) a polymeric adhesion modifier; (d) a decomposition accelerating agent, and (e) a cross-linking agent. Because the documents cited by the examiner fail to teach or suggest all the claim limitations, Applicant respectfully asserts that a *prima facie* case of obviousness cannot be

maintained. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 23-25 and 47-52.

No Suggestion or Incentive to Modify or Combine References

The Examiner has not met the burden to show sufficient motivation for one of ordinary skill in the art at the time of the invention to modify or combine the reference teachings. "When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper." M.P.E.P. § 2142. Also, the Examiner should set forth in the Office Action "an explanation why one of ordinary skill in the art at the time of the invention was made would have been motivated to make the proposed modification" (emphasis added). M.P.E.P. § 706.02(j).

Applicant respectfully submits that there is no teaching or suggestion to combine the documents cited by the Examiner within disclosures of Dudley, Grant, and Nickerson. Even if combined, the teachings of Dudley, Grant, and Nickerson would not allow one skilled in the art to arrive at the presently claimed invention. The combination of Dudley, Grant, and Nickerson might produce a seat that comprises a plurality of separate pads (Dudley), wherein each pad is a replaceable insert made of materials such as polyurethane foam, reticulated polyethylene or polypropylene foam, or open-celled polyvinyl chloride foam (Grant), or wherein the seat pads comprise a thixotropic fluid formed from a mixture of an oil and a block polymer (Nickerson).

In order to establish a *prima facie* case of obviousness, the Examiner must establish an incentive or suggestion to modify the combined disclosures of Dudley, Grant, and Nickerson in a manner necessary to arrive at the presently claimed invention. Specifically, the Examiner must show why one of skill in the art would be motivated to change the seat composition from a pad formed from:

- 1) materials such as polyurethane foam, reticulated polyethylene or polypropylene foam, or open-celled polyvinyl chloride foam, or
- 2) a thixotropic fluid formed from a mixture of an oil and a block polymer

to a foam cushion formed from:

(a) at least one of rubber and a resin; (b) a blowing agent; (c) a polymeric adhesion modifier; (d) a decomposition accelerating agent, and (e) a cross-linking agent.

It is not apparent why (or how) one of skill in the art would have been motivated to make such specific and novel modifications. Because there is no suggestion or incentive to modify the teachings of Dudley, Grant, and Nickerson in a manner necessary to arrive at Applicant's claimed invention, Applicant respectfully submits that the rejection under 35 U.S.C. §103(a) should be withdrawn. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 23-25 and 47-52.

In conclusion, the rejection of claims 23-25 and 47-52 cannot be maintained because the documents cited by the examiner, alone or in combination, do not teach or suggest all the limitations of Applicant's claims. The foam cushion employed in the seat and backrest of the presently claimed invention is comfortable, durable and provides body support for both short and long term sitting. Furthermore, the seat and backrest are durable to withstand different pressures from different body weights such that they can prevent or alleviate human ailments, for example, spinal strain, thrombosis or pressure ulcers acquired or aggravated by sitting (specification at page 2, lines 5-9). Additionally, the foam cushions recited in Applicant's claims are resistant to fatigue (specification at pages 36-37 and 39-40). Accordingly, withdrawal of the rejection is respectfully requested.

Applicant has reviewed the references made of record and not relied upon, but does not find them to be any more relevant than the patents discussed in the Office Action. Because the references are not made part of the rejections of this Office Action, Applicant has not specifically addressed the additional documents. Applicant reserves the right to further address any rejections based upon these documents.

Summary

Claims 27-49 have been amended to remove the phrase "backrest, or both". The amendments to claims 27-49 obviate the grounds for the rejection under 35 U.S.C. §112, second paragraph. Claims 1 and 26 have been amended to incorporate the limitation of claims 3 and 17, respectively. Claims 1 and 26 now recite "wherein the soft elastic material is a continuous, one piece seamless material." The amendments to claims 1 and 26 obviate the grounds for rejection

under 35 U.S.C. §102(b). The Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 23-25 and 47-52. Specifically, the prior art fails to teach or suggest all of the elements and limitations of Applicant's claims. Thus, the rejection under 35 U.S.C. §103(a) cannot be supported. Accordingly, Applicant respectfully submits that each of claims 1-2, 4, 7-26, 28, and 31-52 are in condition for allowance. Withdrawal of the rejections and allowance of the claims is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 359-3261 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

ADAM J. KOFFLER

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 359-3261

Date 3/22/05

By 
Gary J. Speier
Reg. No. 45,458

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of March, 2005.

KACIA LEE
Name

Kacia Lee
Signature